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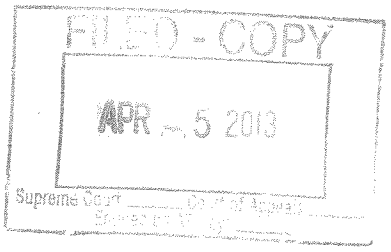
State v. Peaslee Appellant's Brief Dckt. 39588

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. BRANDON JOSHUA PEASLEE, Defendant-Appellant.	Supreme Court Docket No. 39588 District Court Case No. CR-FE-2011-7428 APPELLANT'S BRIEF



BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Michael G. Brady, ISB #1293 Eric D. Fredericksen, ISB #6555 Brady Law, Chartered St. Mary's Crossing 2537 West State Street, Suite 200 Boise, Idaho 83702 Phone: (208) 345-8400 ATTORNEYS FOR DEFENDANT-APPELLANT	Kenneth K. Jorgensen Idaho Attorney General's Office Chief, Appellate Unit P.O. Box 83720 Boise, Idaho 83720-0010 Phone: (208) 334-3545 ATTORNEYS FOR PLAINTIFF-RESPONDENT

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STATEMENT OF CASE

Nature of the Case

Brandon Peaslee entered a conditional plea of guilty to conspiracy to commit robbery and the district court imposed a unified sentence of life, with ten years fixed. On appeal, Mr. Peaslee asserts that the district court erred in determining that he was not coerced and voluntarily waived his *Miranda* rights during an interrogation in which he made inculpatory statements; the district court erred in holding that he voluntarily consented to a search of his vehicle; and the district court abused its discretion by imposing an excessive, both fixed and aggregate, sentence upon him in light of the mitigating factors present in his case.

Statement of the Facts and Course Proceedings

In the early morning hours of May 14, 2011, nineteen year old Brandon Peaslee agreed to drive Taylor Wray to the Jackson's Chevron on Chinden Boulevard in Garden City. (PSI, pp.2-7.) Mr. Wray wanted to rob the Jackson's to obtain money to pay an outstanding drug debt. (PSI, p.5.) Mr. Peaslee drove Mr. Wray to the gas station and waited outside as Mr. Wray entered with Mr. Peaslee's shotgun. (PSI, pp.2-7.)[1] Mr. Wray entered the Jackson's with the loaded firearm, yelled for the clerk, Larry Hammen, to open the safe, despite Mr. Hammen's protests that he could not. (PSI, p.2.) Mr. Wray then fired three shots at Mr. Hammen and fled the store. (PSI, p.2.) Mr. Hammen was struck in the left arm and chest. (PSI, pp.2-3.) Mr. Peaslee, while sitting in the vehicle, heard three "plink" sounds, which he identified as being gun shots. (PSI, p.5.) When Mr. Peaslee questioned Mr. Wray about the gunshots, Mr. Wray

[1] While attempting to load the shotgun, Mr. Wray caused it to jam. Mr. Peaslee "field-stripped" the firearm, clearing the jam, and handed it back to Mr. Wray. (PSI, p.3.)

told him that he just shot to scare the clerk and did not harm him. (PSI, p.5.) After driving around and spending some time at the Wal-Mart on Overland, Mr. Peaslee drove Mr. Wray home. (PSI, pp.3, 5.)

The following morning, Mr. Peaslee drove to Mountain Home to stay with his girlfriend and was ultimately interrogated by officers at the Mountain Home police station. (PSI, p.3.) Mr. Peaslee admitted to officers that he was driving the vehicle at the time of the incident. (PSI, p.3.) During a search of Mr. Peaslee's vehicle, officers located the items used in the Jackson's robbery. (PSI, p.3.)

Mr. Peaslee was charged by Indictment with conspiracy to commit robbery and infliction of great bodily harm during an attempted felony or conspiracy. (R., pp.51-53.) Defense counsel for Mr. Peaslee filed a Motion to Suppress seeking to suppress all inculpatory statements made by Mr. Peaslee during the interrogation, as well as the evidence obtained during the search of Mr. Peaslee's vehicle. (R., pp.85-86, 91-116.) Following a suppression hearing, the district court entered an order denying Mr. Peaslee's Motion to Suppress. (R., pp.134-141.) The district court concluded that Mr. Peaslee voluntarily waived his *Miranda*[2] rights, the waiver was valid, and he was not subjected to any improper coercion. (R., p.140.) With regard to the search, the district court stated, "I also find that this consent to search his vehicle was voluntarily given and valid." (R., p.141.)

Mr. Peaslee then entered a conditional plea of guilty to conspiracy to commit robbery, preserving his right to appeal the denial of his suppression motion. (R., pp.144-153.) The district court imposed a unified sentence of life, with ten years fixed, upon Mr. Peaslee. (R.,

[2] *Miranda v. Arizona*, 348 U.S. 436 (1985).

pp.163-165.) The district court also imposed an Order for Restitution and Judgment in the amount of $236,316.42. (R., pp.161-162.) Mr. Peaslee timely filed a Notice of Appeal from the district court's Judgment and Commitment. (R., pp.167-169.) Mr. Peaslee then filed an Idaho Criminal Rule 35 motion, which was denied by the district court.[3] (Augmentation)

[3] Because the district court did not deny Mr. Peaslee's Rule 35 motion until 253 days after it was filed and 361 days after the Judgment of Conviction was entered, it is likely the district court was without jurisdiction at the time the motion was denied. *See State v. Tranmer*, 135 Idaho 614 (Ct. App. 2001). As such, that issue is not raised on appeal.

ISSUES

1. Did the district court err in denying Mr. Peaslee's motion to suppress statements and evidence in violation of his rights under the Fifth Amendment of the United States Constitution?

2. Did the district court abuse its discretion when it imposed a unified sentence of life, with ten years fixed, upon Mr. Peaslee, following his plea of guilty to conspiracy to commit robbery, in light of the mitigating factors present in his case?

ARGUMENT

I.

The District Court Erred In Failing To Grant Mr. Peaslee's Motion To Suppress As His Statements Were Coerced And Obtained In Violation Of His Right To Due Process Of Law

A. Introduction

Following an extended interrogation in a small room with law enforcement officers, Mr. Peaslee admitted to driving a vehicle that was used in the armed robbery and shooting of clerk at Jackson's Chevron. Mr. Peaslee also permitted officers to search his vehicle, wherein officers eventually located the shotgun used in the shooting. Mr. Peaslee contends that his statements were coerced and obtained in violation of his right to Due Process.

B. Relevant Jurisprudence And Standard Of Review

The Fifth Amendment to the Constitution of the United States provides that a defendant has a constitutional privilege against self-incrimination. U.S. CONST amend. V. A defendant's Fifth Amendment rights must be explained to him before custodial interrogation may begin. *Miranda v. Arizona*, 384 U.S. 436 (1966). According to *Miranda*:

> when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege, and unless other fully effective means are adopted to notify the person of his right of silence and to assure the exercise of the right will be scrupulously honored, the following measures are required. He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney; and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

Id. at 464.

The United States Supreme Court "has long held that certain interrogation techniques, either in isolation or as applied to the unique characteristics of a particular suspect, are so offensive to a civilized system of justice that they must be condemned under the Due Process Clause of the Fourteenth Amendment." *Miller v. Fenton*, 474 U.S. 104, 109 (1985) (citing *Brown v. Mississippi*, 297 U.S. 278 (1936)). Confessions that are secured through constitutionally invalid means are described as "involuntary." *Id.* (citing *Blackburn v. Alabama*, 361 U.S. 199, 207 (1960)). "The doctrine disallowing the use of involuntary confessions ... is grounded in the Due Process Clause of the Fourteenth Amendment, and it applies to any confession that was the product of police coercion, either physical or psychological, or that was otherwise obtained by methods offensive to due process." *State v. Doe*, 130 Idaho 811, 814-815 (citing *Miller, supra*; *Oregon v. Elstad,* 470 U.S. 298, 304 (1985); *Haynes v. Washington,* 373 U.S. 503, 514–515 (1963)). "[C]oercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition." *Blackburn* 361 U.S. at 206 (citing *Chambers v. Florida*, 309 U.S. 227 (1940)). The proper inquiry is to determine, from the totality of the circumstances, whether the incriminating statements were the product of the defendant's will being overborne by police coercion. *Arizona v. Fulminante*, 499 U.S. 279, 285-288 (1991). The standard of review of a suppression motion is bifurcated.

When a decision on a motion to suppress is challenged, the appellate court accepts the trial court's findings of fact which were supported by substantial evidence, but freely reviews the application of constitutional principles to the facts as found. *State v. Atkinson,* 128 Idaho 559, 561 (Ct. App. 1996). The ultimate question of whether a confession was involuntary is a legal question subject to *de novo* review. *Fulminante*, 499 U.S. at 287.

C. The District Court Erred In Failing To Grant Mr. Peaslee's Motion To Suppress As His Statements Were Coerced And Obtained In Violation Of His Right To Due Process Of Law

Prior to trial, defense counsel for Mr. Peaslee filed a Motion to Suppress all inculpatory statements made by Mr. Peaslee during the interrogation, as well of the evidence obtained during the search of Mr. Peaslee's vehicle. (R., pp.85-86, 91-116.) Mr. Peaslee argued that he was "in custody" for purposes of *Miranda* because the interrogation took place "at the Elmore County Sheriff's Department . . . in a small room behind closed doors where Brandon was alone, with two experienced, armed detectives." (R., p.101.) Additionally, "Brandon was never advised that he was free to leave[,] . . . was aggressively interrogated for well over one (1) continuous hour[,] . . . [and] the interrogating detectives expressly manifested their belief of Brandon's culpability and the potentially severe consequences thereof." (R., p.101.)

Next, defense counsel argued that Mr. Peaslee's "purported waiver of his Miranda rights was not voluntary, knowing, or intelligent because it was obtained by the use of a materially deceptive 'notification' form."[4] (R., p.102.) Trial counsel argued that the "form mislead

[4] The "notification" form, which required Mr. Peaslee to initial after each statement, provided:
(1) I have the right to remain silent.
(2) Anything I say may be used against me in a court of law.
(3) I have the right to talk to a lawyer, and have my lawyer present with me while being questioned.
(4) If I cannot afford to hire a lawyer, one will be appointed to represent me free of charge before any questioning.
(5) I can decide at any time to exercise these rights, and not answer any questions or make any statements.
(6) I understand these rights, and having them in mind, I wish to talk to the officer now.
(Defendant's Exhibit B).

Brandon into believing he was signing and initialing a mere notification of his Miranda rights when in fact he was also waiving those rights at the same time. Not only is this form materially misleading, but it did not provide Brandon with the option to waiver or not waive said rights." (R., p.103 (emphasis in original).) In sum, Mr. Peaslee "was never given the option to waive or not to waive said rights." (R., p.103 (emphasis in original).) Finally, Mr. Peaslee argued that the physical evidence seized from his vehicle should also be suppressed because Mr. Peaslee's alleged consent to search was "irrevocably intertwined with and the result of illegal police activity." (R., p.104.) Effectively, it was Mr. Peaslee's contention that because the inculpatory statements he made during the interrogation were obtained without a valid waiver of his *Miranda* rights, his alleged consent and the subsequent search were "fruits" of the initial illegal police activity.

In response, the State argued that Mr. Peaslee's written and verbal *Miranda* waiver was valid. (R., pp.124-125.) The State then argued that even if Mr. Peaslee's statement that he understood his rights and subsequent answering of all questions asked by the officers was not sufficient, "a defendant does not need to make a specific indication that he waives his rights, so long as he is properly informed." (R., p.126 (citing *Berghuis v. Thompkins*, ____ U.S. ____, 130 S.Ct. 2250 (2010).)

The district court then held a hearing on the suppression motion. During the hearing, Mr. Peaslee testified that he had never previously been arrested, was never told he was free to leave the interrogation, initialed the notification form at the request of officers, and believed that once he initialed the boxes on the "notification" form, he was required to answer the officers' questions. (10/3/11 Tr., p.11, L.24 – p.15, L.17.) Then, during cross-examination by the State,

Mr. Peaslee acknowledged that: he knew had the right to remain silent; if he would have told officers he did not want to talk, the interrogation would have been over; if he would have asked for an attorney, one would have been appointed before any further questions were asked; he had a constitutional right to stop answering questions; and he did not say anything to the officers to convey that he did not wish to speak with them. (10/3/11 Tr., p.19, L.25 – p.31, L.10.) On redirect, Mr. Peaslee testified that he was trying to do what the detectives wanted him to so as to not make them upset. (10/6/11 Tr., p.37, L.6 – p.38, L.7.)

The district court then issued a written decision find that Mr. Peaslee voluntarily waived his *Miranda* rights, the waiver was valid, and he was not subjected to any improper coercion. (R., p.140.) With regard to the search, the district court stated, "I also find that this consent to search his vehicle was voluntarily given and valid." (R., p.141.)

Mr. Peaslee asserts that the district court erred in denying his motion to suppress the inculpatory statements made during the interrogation and the physical evidence obtained following a search of his vehicle. Mr. Peaslee is mindful of both *Miranda* and *Berghuis v. Thompkins*, ____ U.S. ____, 130 S.Ct. 2250 (2010), but asserts, as articulated by defense counsel in his Memorandum in Support of Motion to Suppress and during the motion to suppress hearing, that the district court erred by denying his motion to suppress. The arguments made by defense counsel in his Memorandum in Support of Motion to Suppress and during the suppression hearing are incorporated herein by reference.

II.

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Life, With Ten Years Fixed, Upon Mr. Peaslee Following His Plea Of Guilty To Conspiracy To Commit Robbery, In Light Of The Mitigating Factors Present In His Case

Mr. Peaslee asserts that, given any view of the facts, his unified sentence of life, with ten years fixed, is excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence the appellate court will conduct an independent review of the record, giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

The Idaho Supreme Court has held that, "'[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.'" *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Peaslee does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Peaslee must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). The governing criteria, or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.* (quoting *State v. Wolfe*, 99 Idaho 382, 384 (1978), (*overruled on other grounds by State v. Coassolo,* 136 Idaho 138 (2001)).

Mr. Peaslee asserts that when reviewing the governing criteria in light of the facts and circumstances of this case, both the determinate and aggregate portions of his sentence are excessive. Mr. Peaslee requests that this Court reduce his sentence to fifteen years, with five years fixed, which is the more appropriate sentence considering all of the circumstances in his case. The first objective a court is to review is protection of society. Society would be adequately protected if Mr. Peaslee were paroled at an earlier date. Mr. Peaslee acknowledges that the underlying factual background of his criminal offense is extremely serious; a Chevron clerk was shot by his co-defendant Taylor Wray. (PSI, pp.2-3.) Not to discount the nature of the offense, Mr. Peaslee's role must be examined. Mr. Peaslee did not pull the trigger on the night of the offense; rather, Mr. Peaslee drove Mr. Wray to the location, not knowing that Mr. Wray would escalate the robbery by shooting the clerk. (PSI, pp.5-6.) While Mr. Peaslee admitted to fixing the jammed firearm, Mr. Wray reloaded the weapon prior to entering the Chevron. (PSI, p.5.) After hearing the shots and inquiring as to whether Mr. Wray shot the clerk, Mr. Wray informed Mr. Peaslee that he only shot to scare the clerk. (PSI, p.5.)

So, how is it that a nineteen year old kid with no criminal record or involvement with law enforcement suddenly is connected to a senseless violent act? (PSI, pp.7, 405.) It appears as though Mr. Peaslee's participation in the offense and compliance with Mr. Wray's requests is linked to some personality issues. In his PSI, Mr. Peaslee wrote that Mr. Wray informed him that Mr. Wray owed money for a drug debt and wanted to rob a gas station to get it. (PSI, p.5.) Mr. Peaslee complied with Mr. Wray's request and drove him to a gas station, giving Mr. Wray his shotgun. (PSI, p.5.) Prior to sentencing, Mr. Peaslee submitted to a psychological examination conducted by Dr. Camille LaCroix. (*See* PSI, pp.405-427.) Mr. Peaslee was

diagnosed with Avoidant Personality Disorder and Dependent Personality Disorder. (PSI, p.415.) Mr. Peaslee meet the requirements for Avoidant Personality Disorder based upon his limited number of friends growing up and "feeling socially awkward, personally unappealing and inadequate in new social situations." (PSI, pp.423.) Mr. Peaslee also exhibited an "early adulthood . . . pattern of needed to be taken care of that leads to submissive and clinging behavior and fears of separation." (PSI, p.423.) Taken together, Dr. LaCroix opined that his "features of an Avoidant and Dependant Personality Disorder . . . likely contributed to his willingness to go along with his co-defendant's plan to rob the convenience store with Mr. Peaslee's loaded weapon." (PSI, p.424.) This diagnosis is of course consistent with Mr. Peaslee's belief that "[i]f I could have been stronger in my mind and stood up for myself, I know this all could have been avoided." (PSI, p.7.)

That this offense has already occurred does not mean that Mr. Peaslee should spend possibly the rest of his life, and certainly the next ten years of his life, in prison. Rather, the likelihood of Mr. Peaslee committing future violent acts is "very low." (PSI, p.425.) Mr. Peaslee took the Hare Psychopathy Checklist which is designed to assess an individual's psychopathy and risk of future violence. (PSI, p.421.) Mr. Peaslee's score put him in the percentile rank of .5, which means that "95.5% of male offenders have a psychopathy score higher than" him. (PSI, p.421.) In conjunction with the fact that Mr. Peaslee has no substance abuse issues and a lack of any major mental illness symptoms, Mr. Peaslee has a very low risk of reoffense. Accordingly, society would be protected if this Court was to reduce his sentence to a more appropriate length.

Once released from prison, Mr. Peaslee has a tremendous support system to help him to reintegrate into society and maintain his history of lawful behavior, as he did before the instant offense. Eleven friends and family wrote letters in support of Mr. Peaslee at sentencing. (PSI, pp.340-356.) Garry Shohet, Mr. Peaslee's Boy Scout leader since Mr. Peaslee was nine, described the dedication that Mr. Peaslee put forth to attain the highest scout achievement, Eagle Scout. (PSI, p.340.) Mr. Peaslee's mother wrote that although her son enjoyed shooting guns, he refused to go hunting with his friends because he did not want to hurt any of the animals. (PSI, p.9.) Ms. Peaslee then wrote, "I know in my heart that there is no way Brandon thought Taylor Wray was going to shoot anyone. It just doesn't fit who he is." (PSI, p.9.) Thus, it is evident that once out in society, Mr. Peaslee has the support system in place to once again become a productive member in the community.

Mr. Peaslee has also expressed his sincere remorse for his actions and accepted responsibility for his criminal conduct. Prior to sentencing, Mr. Peaslee wrote a letter to Mr. Hammen, the victim: "I would like to start out by simply saying how sorry I am for what happened. I never expected something like this to happen . . . I just wanted to tell you that I truly, deeply, and sincerely am sorry for what happened." (PSI, p.6.) When asked what he thought about his crime, Mr. Peaslee replied, "I hate the fact that I committed them, and [wish] it never happened. I feel terrible and and [sic] will probley [sic] never forget what I did. I also feel terrible about what happened to Mr. Hamand [sic] and wish that [the] events had never taken place." (PSI, p.5.) Then, at sentencing, Mr. Peaslee stated:

> I take responsibility for my actions. I mean, I would like a chance to turn around and show the court that I really have - - I have potential to really be a good person and show the real person I am, and I would also like an opportunity to address Mr. Hammen.

> I would like to say that I'm very sorry for what happened. What happened was - - it was terrible. I mean, I never dreamed of anything - - anything like that happening. I mean, I know none of the words that I say will probably . . . ever make him feel better, but I would just like to express the fact that I'm sorry in his case.

(Tr., p.187, L.20 – p.188, L.9.)

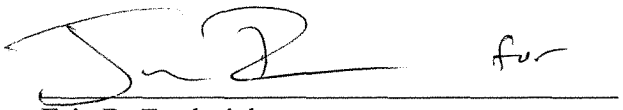
Accordingly, in light of the foregoing, Mr. Peaslee asserts that the district court abused its discretion by imposing an excessive sentence upon him. Mr. Peaslee asks that this Court reduce his sentence to fifteen years, with five years fixed, which the more appropriate sentence considering all of the circumstances in his case, or as this Court deems reasonable.

CONCLUSION

Mr. Peaslee respectfully requests that this Court vacate the district court's order denying his motion to suppress and remand the case for further proceedings. Alternatively, Mr. Peaslee requests this Court reduce his sentence to fifteen years, with five years fixed, as it deems appropriate.

DATED this 5th day of April, 2013.

BRADY LAW, CHARTERED



Eric D. Fredericksen
Attorneys for Defendant-Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of April, 2013, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

Kenneth K. Jorgensen
Chief, Appellate Unit
Idaho Attorney General's Office
P.O. Box 83720
Boise, ID 83720-0010
(*Attorneys for Plaintiff-Respondent*)

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Jason S. Thompson